

**REMARKS**

The above-captioned patent application has been carefully reviewed in light of the Final Office Action to which this Amendment is responsive. Claims 1, 75, 77 and 78 have been further amended in an effort to additionally clarify and particularly point out that which is regarded as the present invention. Claims 41-43, 45-49, 51-56, 58-60 and 79-82 have been canceled. To that end, it is believed that no new matter has been added.

The Examiner has rejected Claims 1, 3, 4, 6-14, 41-43, 45-49, 51-56, 58-60 and 74-82 in light of certain prior art. These pending claims have also been rejected based on 35 USC §112, second paragraph. Applicants respectfully request reconsideration based on the amended claims, as well as the following discussion.

Applicants gratefully acknowledge the telephonic interview granted to Applicants' representative, Peter J. Bilinski, by Examiner Jan Ludlow on November 23, 2005. The subject matter discussed during this interview is incorporated herein in this filed response.

Prior to a discussion of the prior art rejections, Applicants wish to discuss the Section 112 rejection, since all pending claims have been rejected by the Examiner for reasons of indefiniteness. The Examiner notes that all of the limitations of Claim 1 relating to the interrelation of the auxiliary sample handler with the other elements of a combinational clinical analyzer are mere statements of intended use and have therefore been afforded no patentable weight with regard to their interpretation. To that end, Applicants have now amended independent Claim 1 to positively recite the intended interrelation by combining the auxiliary sample handler structurally within the clinical analyzer, the analyzer being specifically recited therein. Claims 41-43, 45-49, 51-56, 58-60 and 79-82 have been canceled.

Turning to the prior art rejections, Claims 1, 3, 6, 7, 41-43 and 74-82 have been rejected under 35 USC §102(b) as being anticipated by Samsoondar (WO 99/47261). Applicants respectfully traverse this rejection. In order to anticipate each and every claimed limitation must be found in the cited single prior art reference. Those limitations not found in the cited prior art reference must be notoriously well known to one of sufficient skill in the field.

First, Samsoondar '261 fails to describe an auxiliary sample handler for a clinical analyzer. This reference is directed to a method and apparatus for measuring proteins in which immunoturbidometric measurements are made on a sample that is disposed in a disposable metering tip, the tip acting as a cuvette as well as a reaction chamber. According to the cited reference, tests are permitted on general chemistry analyzers, using the disposable tip container for purposes of sample integrity as well as for using the disposable metering tip as a reaction chamber; see for example, page 4 of Samsoondar, lines 11-29. This reference, however, fails to provide an auxiliary sample handler used with a clinical analyzer, the handler having specific arrangement of sealed tip retaining stations and a separate arrangement of unsealed tip retaining stations that permit the auxiliary sample handler to be used asynchronously with a clinical analyzer having two analytical systems on board. Samsoondar fails to describe or suggest any use of his apparatus with a clinical analyzer having at least two analytical systems, such as a "dry" chemistry system and a "wet" chemistry system, wherein the auxiliary sample handler performs dual functions of: a) providing an auxiliary sample supply for either or both of the analytical systems and b) providing a supply of unsealed metering tips in order to obtain either sample from the primary sample supply or for obtaining other fluids for adding to a reaction vessel (such as, for example, an immunoassay reaction vessel). Since these features, now positively recited in Claim 1, as amended, are not present in Samsoondar, it is believed there can be no anticipation under the Statute. Claims 3, 4, 6-14 and 74-78 are believed allowable for the same reasons since these claims

depend therefrom. Reconsideration is therefore respectfully requested. Claims 41-43, 45-49, 51-56, 58-60 and 79-82 have been canceled, and therefore the rejection is believed to be moot with respect to those claims.

Claims 1, 8, 41, 76-79, 81 and 82 have been rejected under 35 USC §102(b) as being anticipated by Corbett (WO 92/20778). Applicants respectfully request reconsideration. Claim 1, as amended, now positively recites cooperation between an auxiliary sample handler and a clinical analyzer, and more particularly between the auxiliary sample handler and a primary sample supply and at least two analytical systems of the analyzer. The auxiliary sample handler includes separate pluralities of sealed tip retaining stations and unsealed tip retaining stations. Corbett '778 on the other hand describes a device for DNA amplification by means of PCR (polymerized chain reaction). The device is defined by a ring, including a plurality of wells that receive pipette tips containing sample liquid, the tips of the wells being heat sealed. The purpose of the Corbett device, according to a reading of the reference, is to provide a structure that permits temperature control (e.g., heating/cooling) of the samples. No description of a clinical analyzer is provided or gleaned from this reference. Therefore, no possible integration or cooperation between retained sealed and unsealed tips of an auxiliary sample handler with various aspects of an analyzer can be realized. As a result, it is believed Claim 1, as amended, is patentably distinct from the cited reference. Claims 8, 76, 77 and 78 are also believed to be allowable for the same reasons, since these claims depend from amended Claim 1. Reconsideration is respectfully requested. Claims 41, 79, 81 and 82 have been canceled and therefore this rejection is believed to be moot with regard to those claims.

The Examiner has also made the following rejections under 35 USC §103(a): Claims 4, 53 as being unpatentable over Samsouondar and further in view of Corbett; Claims 3, 4, 42, 53 based on Corbett; Claims 1, 3, 4, 6-14, 41-43, 45-59, 51-56, 58-60, 74-82 based upon Jacobs et al. (U.S. Patent No. 5,846,492) in view of either

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Corbett and/or Samsoundar; and Claims 1, 3, 4, 6-14, 41-43, 45-49, 51-56- 58-60, 74-82 based on Jacobs et al. '518 in view of Samsoundar. Applicants respectfully request reconsideration based on amended Claim 1 and the following discussion.

In order to maintain a *prima facie* obviousness rejection under the Statute, each and every claimed feature must be found in or suggested by the cited prior art. Those features are not described or suggested must be notoriously well known in the field at the time of invention to one of ordinary skill in the field of the invention. To that end, each reference must be read in its entirety and not in a piecemeal fashion so as to recreate the claimed invention through impermissible hindsight (advance knowledge) thereof.

It is believed that none of the above references, whether combined or taken singly, include each of the features now recited in amended Claim 1 that are missing from Samsoundar and Corbett, as described above. Jacobs '492 relates to a technique for positioning a metering tip for performing a sample integrity test using a spectrophotometer or other device to determine sample properties. Jacobs et al. '518 describes various sample quality tests, as performed in an analyzer using spectrophotometric analysis. Neither of these references describe, teach or otherwise provide any inference of an auxiliary sample handler or its operation with a clinical analyzer as now positively recited in amended Claim 1. Therefore, each of the pending dependent claims are also believed to be allowable for the same reasons. Reconsideration is respectfully requested.

Claims 75, 77 and 78 have also been amended to clarify the present invention. Claim 75 has been amended to cure an antecedent basis problem and to further define that the first retaining position is in the tip retaining station. Claims 77 and 78 have each been amended to remove the adaptive/configuration language in favor of positive recitation of the use of the sealed metering tips and unsealed metering tips, respectively. To that end, no new matter has been added. It is believed the elected claims are now in a condition for allowance.

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In summary, it is believed the above-captioned patent application is now in an allowable condition and such allowance is earnestly solicited.


If the Examiner wishes to expedite disposition of the above-captioned patent application, he is invited to contact Applicant's representative at the telephone number below.

The Director is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-0289.

Respectfully submitted,

**WALL MARJAMA & BILINSKI LLP**

By:

A handwritten signature in dark ink, appearing to read "Peter J. Bilinski", is written over a horizontal line.

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